

Article 5. Lawyer Discipline and Disability

Rule 414-501. Purpose, authority, scope and structure of lawyer disciplinary and disability proceedings.

(a) The purpose of lawyer disciplinary and disability proceedings is to ensure and maintain the high standard of professional conduct required of those who undertake the discharge of professional responsibilities as lawyers and to protect the public and the administration of justice from those who have demonstrated by their conduct that they are unable or unlikely to properly discharge their professional responsibilities.

(b) Under Article VIII, Section 4 of the Constitution of Utah, the Utah Supreme Court has exclusive authority within ~~the State of~~ Utah to adopt and enforce rules governing the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.

(c) All disciplinary proceedings shall be conducted in accordance with ~~the rules and proceedings described herein~~ this article and Article 6, Standards for Imposing Lawyer Sanctions. Formal disciplinary and disability proceedings are civil in nature. These rules shall be construed so as to achieve substantial justice and fairness in disciplinary matters with dispatch and at the least expense to all concerned parties.

(d) The interests of the public, the courts, and the legal profession all require that disciplinary proceedings at all levels be undertaken and construed to secure the just and speedy resolution of every complaint.

Rule 214-502. Definitions.

As used in ~~these rules~~ this article:

(a) "Bar" means the Utah State Bar;

(b) "Board ~~of Commissioners~~" means the Board of Commissioners of the Utah State Bar;

(c) "Committee" means the Ethics and Discipline Committee of the Utah Supreme Court;

(d) "~~G~~complainant" means the person who files an informal complaint or the ~~Office of Professional Conduct~~ ("OPC") ~~where~~ when the OPC determines to open an investigation based on information it has received;

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(e) "OPC counsel" means ~~S~~senior ~~C~~counsel and any assistant counsel employed to assist ~~S~~senior ~~C~~counsel; ~~"Senior Counsel" means the lawyer appointed by the Board of Commissioners to lead and supervise the OPC;~~

(f) "~~F~~ormal complaint" means a complaint filed in the district court alleging misconduct by a lawyer or seeking the transfer of a lawyer to disability status;

(g) "~~I~~nformal complaint" means any written, notarized allegation of misconduct by or incapacity of a lawyer which also contains a verification attesting to the accuracy of the information provided;

(h) "NOIC" means Notice of Informal Complaint sent to the ~~R~~espondent after a preliminary investigation ~~and approval by Senior Counsel for referral to a Screening Panel hearing;~~

(i) "~~O~~PC" means the Bar's Office of Professional Conduct;

(j) "~~R~~espondent" means a lawyer subject to the disciplinary jurisdiction of the Utah Supreme Court against whom an informal or formal complaint has been filed;

(k) "Rules of Professional Conduct" means the Utah Rules of Professional Conduct (including the accompanying comments) initially adopted by the Utah Supreme Court in 1988, as amended from time to time;

(l) "screening panel" means members of the Committee who participate in hearings and make determinations under Rule 14-503;

(m) "senior counsel" means the lawyer appointed by the Board to manage the OPC;

(n) "Supreme Court" means the Utah Supreme Court.

Rule ~~3~~14-503. Ethics and ~~d~~Discipline ~~e~~CCommittee.

(a) Composition. The Committee shall be appointed by the Supreme Court. The Committee shall consist of eight ~~(8)~~ public members, and ~~twenty-six (26)~~ members of the Bar who have demonstrated a high standard of professional conduct. All appointments shall be for a term of three ~~(3)~~ years. The Supreme Court shall designate one ~~(1)~~ lawyer member as Committee chair and one ~~(1)~~ lawyer member as Committee vice chair. Committee members shall not serve more than two ~~(2)~~ consecutive terms.

(b) Committee chair. The Committee chair shall supervise the Committee and screening panels. The ~~Committee chair's is responsibility responsible shall be~~ to

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maintain an adequate check on the work of the screening panels to ensure that matters move forward expeditiously, to determine that screening panels have a uniform basis for the judgments rendered, and to provide the screening panels with information concerning ethics and judicial decisions necessary to their activities. The chair shall make recommendations to the Supreme Court concerning appointments to the screening panels and reports concerning the activities of the screening panels and the overall work of the Committee.

(c) Vice chair. The Committee vice chair shall act in the event of the chair's absence or resignation. The ~~Committee~~ chair may call upon the ~~Committee~~ vice chair to assist in any of the Committee chair's duties.

(d) Screening panels, quorums. The Committee members, except for the Committee chair and Committee vice chair, shall be divided into four ~~(4)~~ screening panel sections of six ~~(6)~~ members of the Bar and two ~~(2)~~ public members. The Supreme Court shall name a screening panel chair from each screening panel, who shall preside over the screening panel. In the absence of the screening panel chair, a screening panel vice chair designated by the screening panel shall preside. Two members of the Bar plus one ~~(1)~~ public member shall constitute a quorum of a screening panel. The concurrence of a majority of those members present and voting at any proceeding shall be required for a screening panel determination. ~~In instances when~~ If an even number of screening panel members participate in a proceeding, the chair or vice chair shall not vote unless necessary to break a tie. The chair or vice chair shall, however, fully participate in the proceeding. Each screening panel shall meet as is necessary to effectively and promptly carry out its duties. The entire Committee may be convened at such other times, ~~on the call of~~ by the ~~Committee~~ chair, as necessary to effectively and promptly carry out its duties.

(e) Resignations, alternates. If a Committee member does not attend three ~~(3)~~ consecutive scheduled screening panel hearings, that Committee member shall automatically be deemed to have resigned his or her Committee appointment. Members of any screening panel may serve as alternate members ~~of~~ on different screening

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panels. The Committee chair and the Committee vice chair may serve as alternate members ~~of~~on all screening panels.

(f) Responsibilities. Informal complaints shall be randomly assigned to screening panels. The screening panels ~~may, and as to all informal complaints referred by OPC counsel, which shall be randomly assigned,~~ shall, review, investigate, and hear all informal complaints charging unethical and/or unprofessional conduct against members of the Bar. After such review, investigation, hearing and analysis, the screening panels shall determine the action to be taken on any informal complaint which, based upon the facts of the particular case, is most consistent with the public interest and the Rules of Professional Conduct.

(g) Subpoena. Any party or ~~the a~~ screening panel, for good cause shown, may petition under seal the district court for issuance of a subpoena, subpoena duces tecum or any order allowing discovery prior to the filing of a formal complaint. Except for good cause shown, all petitions under this rule shall require a five-~~day~~ written notice to the opposing party prior to the issuance of an appropriate order of subpoena.

(g)(1) Enforcement of subpoena. A district court in the district in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(g)(2) Quashing subpoena. Any attack on the validity of a subpoena so issued shall be heard and determined by the Committee chair or by the court wherein enforcement of the subpoena is being sought. Any resulting order is not appealable prior to the entry of a final order in the proceeding.

(g)(3) Witnesses and fees. Subpoena fees, witness fees, and mileage shall be reimbursed in the amounts provided under Rule 45 of the Utah Rules of Civil Procedure.

(h)(1) Committee and OPC as screening panel secretary. OPC counsel shall be the secretary to the Committee and is charged with the responsibility of the administrative affairs of the Committee, the handling of the screening panel calendars, giving notice to screening panel members and members of the Bar whose attendance is requested, notifying those who have filed informal complaints of the times and dates their matters

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will be heard, and otherwise performing or providing the secretarial and administrative functions of the Committee and screening panels. Except as otherwise provided in ~~these rules~~this article, whenever OPC counsel may be present before a screening panel during a hearing, the respondent may also be present.

(h)(2) OPC counsel shall within three ~~(3)~~ months after the filing of an informal complaint of unprofessional or unethical conduct of a respondent, advise the party making the informal complaint concerning the initial consideration of the informal complaint, and shall promptly advise such party in writing of the subsequent disposition of the informal complaint and the reasons therefor.

(i) Annual report. Senior ~~C~~counsel shall prepare and submit an annual report to the Supreme Court and the Board ~~of Commissioners~~ encompassing the scope and nature of the Committee work. The report shall be submitted on or about August 1 of each year for the preceding fiscal year and shall set forth the number of disciplinary cases investigated, the number brought before the Committee, formal complaints filed, dispositions, cases dismissed, informal ethics opinions issued, diversionary dispositions and such other information as may be helpful to the Supreme Court in comprehending the operations of the OPC as well as the efficiency and effectiveness of the disciplinary system. Such report may contain Committee recommendations for rule amendments or changes in Committee procedure. The chair and ~~S~~senior ~~C~~counsel shall annually consult with the Board ~~of Commissioners~~ and the Supreme Court regarding the level of activity and general standing of disciplinary matters and procedures.

Rule 414-504. OPC counsel.

(a) Appointment and qualifications. The Board ~~of Commissioners~~ shall appoint a lawyer admitted to practice in Utah to serve as ~~S~~senior ~~C~~counsel. Neither the ~~S~~senior ~~C~~counsel nor any full-time assistant counsel shall engage in the private practice of law for payment.

(b) Powers and duties. The ~~S~~senior ~~C~~counsel shall perform all prosecutorial functions and have the following powers and duties, which may be delegated to other staff:

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(b)(1) ~~S~~screen all information coming to the attention of the OPC to determine whether it is within the jurisdiction of the OPC in that it relates to misconduct by a lawyer or to the incapacity of a lawyer;

(b)(2) ~~I~~investigate all information coming to the attention of the OPC which, if true, would be grounds for discipline or transfer to disability status, and investigate all facts pertaining to petitions for reinstatement or readmission;

(b)(3) ~~F~~or each matter not covered in Rule ~~40~~14-510, brought to the attention of the OPC:

(b)(3)(A) dismiss;

(b)(3)(B) decline to prosecute;

(b)(3)(C) refer non-frivolous and substantial informal complaints to the Committee for hearing; or

(b)(3)(D) petition to the district court for transfer to disability status;

(b)(4) ~~P~~rosecute before the screening panels, the district courts, the Supreme Court, and any other courts, including but not limited to, any court of the United States, all disciplinary cases and proceedings for transfer to or from disability status;

(b)(5) ~~A~~attend the Character and Fitness Committee proceedings in all cases for readmission, and represent the OPC before the district courts, Supreme Court, and any other courts including, but not limited to, any court of the United States in all cases for reinstatement and readmission;

(b)(6) ~~E~~mploy or appoint and supervise staff needed for the performance of prosecutorial functions and delegate such responsibilities as may be reasonably necessary to perform prosecutorial functions, including supervising attorneys who provide pro bono services to the Bar, by supervising the practice of respondents who have been placed on probation;

(b)(7) ~~N~~otify promptly the complainant, the respondent, and any counsel of record of the disposition of each matter;

(b)(8) ~~N~~otify each jurisdiction in which a respondent is admitted of a transfer to disability status, or any public discipline imposed in ~~this state~~ Utah;

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(b)(9) Seek reciprocal discipline where appropriate when informed of any public discipline imposed by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction;

(b)(10) Forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a crime in ~~this state~~ Utah which reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(b)(11) Maintain permanent records of discipline and disability matters, subject to any expungement requirements, and compile statistics to aid in the administration of the system, including but not limited to, a log of all informal complaints received, investigative files, statistical summaries of rules violated and dispositions, any transcripts of proceedings, and other records as the Supreme Court requires to be maintained;

(b)(12) Expunge after seven ~~(7)~~ years all records or other evidence of the existence of any informal complaint terminated by dismissal or a declination to prosecute;

(b)(12)(A) Notice to respondent. If the respondent was contacted by the OPC concerning the informal complaint, or the OPC otherwise knows that the respondent is aware of the existence of the informal complaint, the respondent shall be given prompt written notice of the expungement.

(b)(12)(B) Effect of expungement. After a file has been expunged, any OPC response to an inquiry requiring a reference to the matter shall state that there is no record of such matter. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that no informal complaint was made.

(b)(13) Provide informal guidance concerning professional conduct to members of the Bar requesting guidance, participate in seminars which will promote ethical conduct by the Bar, formulate diversionary programs, monitor probations, and disseminate disciplinary results to the Bar and the public through the Utah Bar Journal and otherwise as appropriate, maintaining the confidentiality of respondents subject to private discipline; and

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(b)(14) along with the executive director A annually formulate the budget for the OPC and submit the budget to the Board ~~of Commissioners~~ for approval. OPC counsel may petition the Supreme Court for review of modifications to the budget imposed by the Board ~~of Commissioners~~.

(c) Disqualification. In addition to complying with the Rules of Professional Conduct regarding successive government and private employment (Rule 1.11 of the Rules of Professional Conduct), a former OPC counsel shall not personally represent a lawyer following completion of the OPC counsel's service in any proceeding as provided in these ~~R~~rules which former OPC counsel investigated or prosecuted during his or her employment by OPC.

Rule ~~5~~14-505. Expenses.

(a) The salaries of OPC counsel and staff, their expenses, administrative costs, and the expenses of the members of the screening panels, shall be paid by the Bar.

(b) The budget prepared by the executive director and S~~senior C~~counsel pursuant to Rule ~~4(b)(14)~~14-504(b)(14) shall reasonably ensure the accomplishment of the goals of the disciplinary system, the professional development of the staff, and salaries that will encourage continued employment of competent professionals and support staff and will provide compensation approximately equivalent to current salaries in comparable service.

Rule ~~6~~14-506. Jurisdiction.

(a) ~~P~~ersons practicing law. The persons subject to the disciplinary jurisdiction of the Supreme Court and the OPC include any lawyer admitted to practice law in ~~this state~~ Utah, any lawyer admitted but currently not properly licensed to practice in ~~this state~~ Utah, any formerly admitted lawyer with respect to acts committed while admitted to practice in ~~this state~~ Utah or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of any rule promulgated, adopted, or approved by the Supreme Court or any other disciplinary authority where the attorney was licensed to practice or was practicing law at the time of the alleged violation, any lawyer specially admitted by a court of ~~this state~~ Utah for a particular proceeding, and

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any other person not admitted in ~~this state~~ Utah who practices law or who renders or offers to render any legal services in ~~this state~~ Utah.

(b) Incumbent and sitting judges. Incumbent and sitting judges are subject to the jurisdiction of OPC only for conduct that occurred prior to the taking of office.

(c) Former judges. A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the Supreme Court not only for conduct as a lawyer but also for misconduct that occurred while the lawyer was a judge and would have been grounds for lawyer discipline, provided that the misconduct was not the subject of a judicial disciplinary proceeding as to which there has been a final determination by the Supreme Court.

(d) Part-time judges. Part-time judges, while in office, are subject to lawyer disciplinary and disability proceedings for acts outside their judicial capacity.

Rule ~~7~~14-507. Roster of lawyers and current record information.

The Bar shall collect, maintain and have ready access to current information relating to members of the Bar including:

(a) full name;

(b) date of birth;

(c) ~~current law office and home addresses and telephone numbers~~ physical addresses, and current telephone numbers for law office and residence, except that full-time judges are exempt from providing residential addresses and telephone numbers;

(d) date of admission ~~in the state~~;

(e) date of any transfer to or from inactive status;

(f) all specialties in which certified;

(g) other jurisdictions in which the lawyer is admitted and date of admission; and

(h) nature, date, and place of any discipline imposed and any reinstatements.

Rule ~~8~~14-508. Periodic ~~A~~assessment of ~~L~~lawyers.

(a) Annual licensing fee. Every lawyer admitted to practice in ~~this state~~ Utah shall pay to the Bar on or before July 1 of each year an annual license fee for each fiscal year to be fixed by the Board ~~of Commissioners~~ from time to time and approved by the

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Supreme Court. The fee shall be sufficient to pay the costs of disciplinary administration and enforcement under ~~these rules~~ this article.

(b) ~~Suspension for non-payment of licensing fee~~ Failure to renew annual license. Failure to pay the annual licensing fee or provide the required annual licensing information shall result in administrative suspension. Any ~~attorney-lawyer~~ who shall practices law ~~while suspended for non-payment of the license fee after failure to renew his or her license~~ violates the Rules of Professional Conduct and may be disciplined ~~for practicing while suspended for non-payment of fees~~. The ~~E~~xecutive ~~D~~irector ~~of the Bar or his or her designee~~ shall give notice of such removal from the rolls to such non-complying member at the designated mailing address on record at the Bar, and to the ~~Utah Supreme Court and to the judges of the district courts~~ state and federal courts in Utah. The non-complying member may apply in writing for re-enrollment by tendering the license fees and/or the required information and an additional ~~one hundred dollars~~ ~~(\$100)~~ delinquent fee. Upon receiving the same, the Bar shall ~~accept it and~~ order re-enrollment and so notify the courts. Re-enrollment based on ~~suspension for non-payment failure to renew~~ does not negate any orders of discipline.

Rule ~~9~~14-509. Grounds for discipline.

It shall be a ground for discipline for a lawyer to:

(a) violate the Rules of Professional Conduct;

(b) willfully violate a valid order of a court or a screening panel imposing discipline;

(c) be publicly disciplined in another jurisdiction;

(d) fail to comply with the requirements of Rule 14-526(e); or

~~(de)~~ fail to notify the OPC of public discipline in another jurisdiction in accordance with Rule ~~22(a)~~14-522(a).

Rule ~~40~~14-510. Prosecution and appeals.

(a) Informal complaint of unprofessional conduct.

(a)(1) Filing. A disciplinary proceeding may be initiated against any member of the Bar by any person, OPC counsel or the Committee, by filing with the Bar, in writing, an informal complaint in ordinary, plain and concise language setting forth the acts or

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omissions claimed to constitute unprofessional conduct. Upon filing, an informal complaint shall be processed in accordance with ~~these rules~~ this article.

(a)(2) Form of informal complaint. The informal complaint need not be in any particular form or style and may be by letter or other informal writing, although a form may be provided by the OPC to standardize the informal complaint format. It is unnecessary that the informal complaint recite disciplinary rules, ethical canons or a prayer requesting specific disciplinary action. The informal complaint shall be signed by the complainant and shall set forth the complainant's address, and may list the names and addresses of other witnesses. The informal complaint shall be notarized and contain a verification attesting to the accuracy of the information contained in the complaint. In accordance with Rule ~~4(b)~~ 14-504(b), complaints filed by OPC are not required to contain a verification. The substance of the informal complaint shall prevail over the form.

(a)(3) Initial investigation. Upon the filing of an informal complaint, OPC counsel shall conduct a preliminary investigation to ascertain whether the informal complaint is sufficiently clear as to its allegations. If it is not, OPC counsel shall seek additional facts from the complainant; ~~which additional~~ facts shall also be submitted in writing and signed by the complainant.

(a)(4) Notice of informal complaint. Upon completion of the preliminary investigation, OPC counsel shall determine whether the informal complaint can be resolved in the public interest, the respondent's interest and the complainant's interest. OPC counsel and/or the screening panel may use their efforts to resolve the informal complaint. If the informal complaint cannot be so resolved or if it sets forth facts which, by their very nature, should be brought before the screening panel, or if good cause otherwise exists to bring the matter before the screening panel, OPC counsel shall cause to be served a ~~Notice of Informal Complaint~~ NOIC by regular mail upon the respondent at the address reflected in the records of the Bar. The ~~notice~~ NOIC shall have attached a true copy of the signed informal complaint against the respondent and shall identify with particularity the possible violation(s) of the Rules of Professional Conduct raised by the informal complaint as preliminarily determined by OPC counsel.

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(a)(5) Answer to informal complaint. Within ~~twenty (20)~~ days after service of the ~~Notice of Informal Complaint NOIC~~ on the respondent, the respondent shall file with OPC counsel a written and signed answer setting forth in full an explanation of the facts surrounding the informal complaint, together with all defenses and responses to the claims of possible misconduct. For good cause shown, OPC counsel may extend the time for the filing of an answer by the respondent not to exceed an additional ~~thirty (30)~~ days. Upon the answer having been filed or ~~in the event that if~~ the respondent fails to respond, OPC counsel shall refer the case to a screening panel for investigation, consideration and determination. OPC counsel shall forward a copy of the answer to the complainant.

(a)(6) Dismissal of informal complaint. An informal complaint which, upon consideration of all factors, is determined by OPC counsel to be frivolous, unintelligible, barred by the statute of limitations, more adequately addressed in another forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, or which OPC declines to prosecute may be dismissed by OPC counsel without hearing by a screening panel. OPC counsel shall notify the complainant of such dismissal stating the reasons therefor. The complainant may appeal a dismissal by OPC counsel to the Committee chair within ~~fifteen (15)~~ days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, ~~and~~ either affirm the dismissal or require OPC counsel to prepare a NOIC, and set the matter for hearing by a screening panel. In the event of the chair's recusal, the chair shall appoint the vice chair or one ~~(1)~~ of the screening panel chairs to review and determine the appeal.

(b) Proceedings before ~~e~~CCommittee and screening panels.

(b)(1) Review and investigation. A screening panel shall review all informal complaints referred to it by OPC counsel, including all the facts developed by the informal complaint, answer, investigation and hearing, and the recommendations of OPC counsel.

(b)(2) Respondent's appearance. Before any action is taken which may result in the recommendation of an admonition or the filing of a formal complaint, the screening

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panel shall, upon at least ~~fourteen~~(14) days notice, afford the respondent an opportunity to appear before the screening panel and testify under oath, together with any witnesses called by the respondent, and to present an oral argument with respect to the informal complaint. All testimony shall be recorded and preserved so long as proceedings are pending, and in any event, not less than six ~~(6)~~ months following the hearing. A written brief may also be submitted to the screening panel by the respondent. The brief shall not exceed five ~~(5)~~ pages in length unless permission for enlargement is extended by the chair or the chair's delegate for good cause shown. A copy of the brief shall be forwarded by OPC counsel to the complainant.

(b)(3) Complainant's appearance. A complainant shall have the right to appear before the screening panel personally and testify under oath, together with any witnesses called by the complainant, with respect to the informal complaint or in opposition to the matters presented by the respondent. The complainant may be represented by counsel or some other representative.

(b)(4) Right to hear evidence. The complainant and the respondent shall each have the right to be present during the presentation of the evidence unless excluded by the screening panel chair for good cause shown.

(b)(5) Screening panel determination. Upon review of all the facts developed by the informal complaint, answer, investigation and hearing, the screening panel, in behalf of the Committee, shall make one of the following determinations:

(b)(5)(A) ~~T~~that the informal complaint does not raise facts in which there is probable cause to believe that the respondent was engaged in unprofessional conduct, in which case, the informal complaint shall be dismissed. OPC counsel shall promptly give notice of such dismissal by regular mail to the complainant and the respondent-; or

(b)(5)(B) ~~T~~that a letter of caution may be issued. The letter shall be signed by OPC counsel or the screening panel chair and shall serve as a guide for the future conduct of the respondent. Thereupon, the informal complaint shall be dismissed, with the complainant and the respondent being notified of the dismissal. The complainant shall also be confidentially notified of the caution-; or

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(b)(5)(C) That a dismissal may be conditioned upon the performance by the respondent of specified conduct which the Committee determines to be warranted by the facts and the Rules of Professional Conduct; or

(b)(5)(D) That the informal complaint be referred to the Committee chair with an accompanying screening panel recommendation that the respondent be admonished. Such screening panel recommendation shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent should be admonished. A copy of such screening panel recommendation shall be served upon the respondent prior to delivery of the recommendation to the Committee chair. The Committee chair shall enter an order admonishing the respondent if no exception has been filed within ten ~~(10)~~ days of notice of the recommendation being provided to the respondent; or

(b)(5)(E) That the informal complaint be referred to the Committee chair with an accompanying screening panel recommendation that the respondent receive a public reprimand. Such screening panel recommendation shall be in writing and shall state the substance and nature of the informal complaint and defenses and the basis upon which the screening panel has concluded, by a preponderance of the evidence, that the respondent should receive a public reprimand. A copy of such screening panel recommendation shall be served upon the respondent prior to the delivery of the recommendation to the Committee chair. The Committee chair shall enter an order publicly reprimanding the respondent if no exception has been filed within ten ~~(10)~~ days of notice of the recommendation being provided to the respondent; or

(b)(5)(F) That a formal complaint be filed against the respondent.

(b)(6) Determination of appropriate sanction. In determining an appropriate sanction and only after having found unethical conduct, the screening panel may consider any admonitions or greater discipline imposed upon the respondent within the five ~~(5)~~ years immediately preceding the alleged offense.

(b)(7) Continuance of disciplinary proceedings. A disciplinary proceeding may be held in abeyance by the Committee prior to the filing of a formal complaint when the

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allegations or the informal complaint contain matters of substantial similarity to the material allegations of pending criminal or civil litigation in which the respondent is involved.

(c) Exceptions to admonitions and public reprimands. Within ten ~~(10)~~ days after notice of the recommendation of an admonition or public reprimand to the Committee chair, the respondent may file with the Committee chair an exception to the recommendation and may also, if desired, request a hearing. If a request for a hearing is made, the Committee chair, or a screening panel chair designated by the Committee chair, shall proceed to hear the matter in an expeditious manner, with OPC counsel and the respondent having the opportunity to be present. The complainant's testimony may be read into the record. The complainant need not appear personally unless called by the respondent as an adverse witness for purposes of cross-examination. The respondent shall have the burden of proof of showing that the recommendation is unreasonable, unsupported by substantial evidence, arbitrary, capricious and otherwise clearly erroneous.

Rule ~~44~~14-511. Proceedings subsequent to finding of probable cause.

(a) Commencement of action. ~~In the event if~~ the screening panel finds probable cause to believe that there are grounds for public discipline and that a formal complaint is merited, OPC counsel shall prepare and file with the district court a formal complaint setting forth in plain and concise language the facts upon which the charge of unprofessional conduct is based and the applicable provisions of the Rules of Professional Conduct. The formal complaint shall be signed by the Committee chair or, in the chair's absence, by the Committee vice chair or a screening panel chair designated by the Committee chair.

(b) Venue. The action shall be brought and the trial shall be held in the county in which an alleged offense occurred or in the county where the respondent resides or practices law or last practiced law in Utah; provided, however, that if the respondent is not a resident of Utah and the alleged offense is not committed in Utah, the trial shall be held in a county designated by the Chief Justice of the Supreme Court. The parties may

stipulate to a change of venue in accordance with applicable law (currently Utah Code section 78-13-9).

(c) Style of proceedings. All proceedings instituted by the OPC shall be styled "In the Matter of the Discipline of (name of respondent and respondent's Bar number), Respondent."

(d) Change of judge as a matter of right.

(d)(1) Notice of change. The respondent or OPC counsel may, by filing a notice indicating the name of the assigned judge, the date on which the formal complaint was filed, and that a good faith effort has been made to serve all parties, change the judge assigned to the case. The notice shall not specify any reason for the change of judge. The party filing the notice shall send a copy of the notice to the assigned judge and to the presiding judge. The party filing the notice may request reassignment to another district court judge from the same district, which request shall be granted. Under no circumstances shall more than one ~~(4)~~ change of judge be allowed to each party under this rule.

(d)(2) Time. Unless extended by the court upon a showing of good cause, the notice must be filed within ~~thirty (30)~~ days after commencement of the action or prior to the notice of trial setting, whichever occurs first. Failure to file a timely notice precludes any change of judge under this rule.

(d)(3) Assignment of action. Upon the filing of a notice of change, the assigned judge shall take no further action in the case. The presiding judge shall promptly determine whether the notice is proper and, if so, shall reassign the action. If the presiding judge is also the assigned judge, the clerk shall promptly send the notice to the Chief Justice of the Supreme Court, who shall determine whether the notice is proper and, if so, shall reassign the action.

(d)(4) Rule 63 and Rule 63A unaffected. This rule does not affect any rights a party may have pursuant to Rule 63 or Rule 63A of the Utah Rules of Civil Procedure.

(e) Actions tried to the bench; findings and conclusions. All actions tried according to ~~these rules~~ this article shall be tried to the bench, and the district court shall enter

findings of fact and conclusions of law. Neither masters nor commissioners shall be utilized.

(f) Sanctions hearing. Upon a finding of misconduct and as soon as reasonably practicable, ~~but within a target date of~~ not more than ~~thirty (30)~~ days after the district court enters its findings of fact and conclusions of law, it shall hold a hearing to receive relevant evidence in aggravation and mitigation, and shall within five ~~(5)~~ days thereafter, enter an order sanctioning the respondent. Upon reasonable notice to the parties, the court, at its discretion, may ~~determine to~~ hold the sanctions hearing immediately after the misconduct proceeding.

(g) Review. Any discipline order by the district court may be reviewed by the Supreme Court through a petition for review pursuant to the Utah Rules of Appellate Procedure.

~~Rule 12~~14-512. Sanctions.

The imposition of sanctions against a respondent who has been found to have engaged in misconduct shall be governed by ~~the Chapter 14, Article 6, Standards for~~ Imposing Lawyer Sanctions.

~~Rule 13~~14-513. Immunity from civil suits.

(a) Participants in proceedings conducted under ~~these rules this article~~ shall be entitled to the same protections for statements made in the course of the proceedings as participants in judicial proceedings. The district courts, Committee members, special counsel appointed pursuant to Rule ~~17(f)~~14-517(f), supervising attorneys engaged in pro bono assistance, trustees appointed pursuant to Rule ~~27~~14-527, and OPC counsel and staff shall be immune from suit, except as provided in Utah Rules of Civil Procedure 65A and 65B, for any conduct committed in the course of their official duties, including the investigatory stage. There is no immunity from civil suit for intentional misconduct.

~~Rule 14~~14-514. Service.

(a) Service of formal complaint or other petition. Service of the formal complaint upon the respondent in any disciplinary proceeding or the petition in any disability proceeding shall be made in accordance with the Utah Rules of Civil Procedure.

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(b) Service of other papers. Service of any other papers or notices required by ~~these~~ [rules this article](#) shall be made in accordance with the Utah Rules of Civil Procedure.

Rule ~~45~~[14-515](#). Access to disciplinary information.

(a) Confidentiality. Prior to the filing of a formal complaint or the issuance of a public reprimand pursuant to Rule ~~40-14-510~~ in a discipline matter, the proceeding is confidential, except that the pendency, subject matter, and status of an investigation may be disclosed by OPC counsel if the proceeding is based upon allegations that have been disseminated through the mass media, or include either the conviction of a crime or reciprocal public discipline. The proceeding shall not be deemed confidential to the extent:

[\(a\)](#)(1) the respondent has given an express written waiver of confidentiality;

[\(a\)](#)(2) there is a need to notify another person or organization, including the [Bar's Client Security Lawyer's Fund for Client Protection](#), in order to protect the public, the administration of justice, or the legal profession; or

[\(a\)](#)(3) the information is required in a subsequent [lawyer](#) sanctions hearing;

(b) Public proceedings. Upon the filing of a formal complaint in a discipline matter, the filing of a petition for reinstatement, or the filing of a motion or petition for interim suspension, the proceeding is public, except as provided in paragraph (d) below.

(c) Proceedings alleging disability. Proceedings for transfer to or from disability status are confidential. All orders transferring a respondent to or from disability status are public.

(d) Protective order. In order to protect the interest of a complainant, witness, third party, or respondent, the district court may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(e) Request for nonpublic information. Nonpublic information shall be confidential, other than as authorized for disclosure under paragraph (a), unless:

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(e)(1) the request for information is made by the Board of Commissioners, any Bar committee or the Executive Director of the Bar, and is required in the furtherance of their duties; or

(e)(2) the request for information is approved by OPC counsel and there is compliance with the provisions of paragraphs (f) and (g) of this rule.

(f) Notice to the respondent. Except as provided in paragraph (g), if the Committee decides to provide nonpublic information requested pursuant to paragraph (e), and if the respondent has not signed an express written waiver permitting the party requesting the information to obtain the nonpublic information, the respondent shall be notified in writing at the respondent's last known designated mailing address as shown by Bar records of that information which has been requested and by whom, together with a copy of the information proposed to be released. The notice shall advise the respondent that the information shall be released at the end of ~~twenty-one~~ (21) days following mailing of the notice unless the respondent objects to the disclosure. If the respondent timely objects to the disclosure, the information shall remain confidential unless the requesting party obtains a court order authorizing its release.

(g) Release without notice. If an otherwise authorized requesting party as outlined in ~~15~~ paragraph (e) has not obtained an express written waiver from the respondent to obtain nonpublic information, and requests that the information be released without giving notice to the respondent, the requesting party shall certify that:

(g)(1) the request is made in furtherance of an ongoing investigation into misconduct by the respondent;

(g)(2) the information is essential to that investigation; and

(g)(3) disclosure of the existence of the investigation to the respondent would seriously prejudice that investigation.

(h) OPC counsel can disclose nonpublic information without notice to the respondent if:

(h)(1) disclosure is made in furtherance of an ongoing OPC investigation into misconduct by the respondent; and

(h)(2) the information that is sought through disclosure is essential to that investigation.

(i) Duty of participants. All participants in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality mandated by this Rule.

Rule 4614-516. Dissemination of disciplinary information.

(a) Notice to disciplinary agencies. The OPC shall transmit notice of public discipline, resignation with discipline pending, transfers to or from disability status, reinstatements, readmissions, and certified copies of judgments of conviction to the disciplinary enforcement agency of every other jurisdiction in which the respondent is admitted, and to the National Discipline Data Bank Lawyer Regulatory Database maintained by the American Bar Association.

(b) Notice to the public. The Executive Director of the Bar shall cause notices of suspension, disbarment, resignation with discipline pending, transfer to disability status and petitions for reinstatements or readmissions to be published in the Utah Bar Journal and in a newspaper of general circulation in each judicial district within this state Utah in which the respondent maintained an office for the practice of law.

(c) Notice to the courts. The Executive Director of the Bar shall promptly cause transmittal of notices of suspension, disbarment, resignation with discipline pending, transfer to or from disability status, reinstatement, or readmission and transfer to or from disability status to all state and federal courts in this state Utah.

Rule 4714-517. Additional rules of procedure.

(a) Governing rules. Except as otherwise provided in these rules this article, the Utah Rules of Civil Procedure, the Utah Rules of Appellate Procedure governing civil appeals, and the Utah Rules of Evidence, apply in formal discipline actions and disability actions.

(b) Standard of proof. Formal complaints of misconduct, petitions for reinstatement and readmission, and petitions for transfer to and from disability status shall be established by a preponderance of the evidence. Motions for interim suspension pursuant to Rule 4814-518 shall be established by clear and convincing evidence.

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(c) Burden of proof. The burden of proof in proceedings seeking discipline or transfer to disability status is on the OPC. The burden of proof in proceedings seeking a reversal of a screening panel recommendation of discipline, or seeking reinstatement, readmission, or transfer from disability status is on the respondent.

(d) Related pending litigation. Upon a showing of good cause, a formal action or a disability proceeding may be stayed because of substantial similarity to the material allegations of a pending criminal, civil, or disciplinary action.

(e) The complainant's actions. Neither unwillingness of the complainant to prosecute an informal or formal complaint, nor settlement or compromise between the complainant and the respondent, nor restitution by the respondent, shall, in and of itself, justify abatement of disciplinary proceedings.

(f) Informal and formal complaints against OPC counsel, Committee members and ~~b~~Board-of-commissioners. An informal complaint filed against OPC counsel, members of the Committee, or a member of the ~~Board-of-Commissioners~~, which, upon consideration of all factors, is determined by a chair of the assigned screening panel (which assignment shall be made by the Committee chair) to be frivolous, unintelligible, barred by the statute of limitations, is being or should have been addressed in another more appropriate forum, unsupported by fact or which does not raise probable cause of any unprofessional conduct, shall be dismissed by the screening panel chair without hearing by a screening panel. The chair of the screening panel shall notify the complainant of the dismissal stating the reasons therefor. The complainant may appeal a dismissal by the chair of the screening panel to the Committee chair within ~~fifteen-(15)~~ days after notification of the dismissal is mailed. Upon appeal, the Committee chair shall conduct a de novo review of the file, and either affirm or reverse the dismissal. If the screening panel chair determines not to dismiss the complaint, or the Committee chair reverses the dismissal on appeal, the Committee chair shall request that the Supreme Court appoint a special counsel to present the case, and if necessary, a special screening panel. In all other respects, the matter shall proceed in accordance with ~~these~~ rules this article. Special counsel shall be a lawyer outside of the OPC appointed by the Supreme Court to act as counsel for investigation and prosecution of the disciplinary

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complaint. Special counsel shall ~~notice~~notify OPC counsel of the results of the investigation.

Rule ~~48~~14-518. Interim suspension for threat of harm.

(a) Transmittal of evidence. Upon receipt of sufficient evidence demonstrating that a lawyer subject to the disciplinary jurisdiction of the Supreme Court poses a substantial threat of irreparable harm to the public and has either committed a violation of the Rules of Professional Conduct or is under a disability as herein defined, OPC counsel shall file a petition for interim suspension in the district court and give notice in accordance with Utah Rule of Civil Procedure 65A. An action is commenced under this rule when the petition for interim suspension is filed.

(b) Immediate interim suspension. After conducting a hearing on the petition, the district court may enter an order immediately suspending the respondent pending final disposition of a disciplinary proceeding predicated upon the conduct causing the harm, or may order such other action as deemed appropriate. ~~In the event if~~ an order is entered:

(b)(1) the district court may appoint a trustee, pursuant to Rule ~~27~~14-527, to protect the interests of the respondent's clients; and

(b)(2) the OPC may file a formal complaint in the district court without presenting the matter to a screening panel.

(c) Notice to clients. A respondent suspended pursuant to paragraph (b) shall comply with the notice requirements in Rule ~~26-14~~14-526 as ordered by the district court.

(d) Motion for dissolution of interim suspension. On two ~~(2)~~ days notice to OPC counsel, a respondent suspended pursuant to paragraph (b) may appear and move for dissolution or modification of the order of suspension, and in that event, the motion shall be heard and determined as expeditiously as the ends of justice require.

Rule ~~49~~14-519. Lawyers convicted of a crime.

(a) Transmittal of judgment of conviction. The court in which a lawyer is convicted of any felony ~~whatsoever~~ or any misdemeanor which reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer shall, within ~~thirty~~ (30) days after the conviction, transmit a certified copy of the judgment of conviction to OPC counsel.

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(b) Motion for interim suspension. Upon being advised that a lawyer has been convicted of a crime which reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, OPC counsel shall determine whether the crime warrants interim suspension. Upon a determination that the crime warrants interim suspension, OPC counsel shall file a formal complaint, accompanied by the certified copy of the judgment of conviction, and concurrently file a motion for immediate interim suspension. An action is commenced under this rule when both the petition for interim suspension and the formal complaint are filed. The respondent may assert any jurisdictional deficiency which establishes that the interim suspension may not properly be ordered, such as that the crime does not reflect adversely on the respondent's honesty, trustworthiness or fitness as a lawyer, or that the respondent is not the individual convicted. The respondent is not entitled to an evidentiary hearing but may request an informal hearing. If an order for interim suspension is not obtained, the formal complaint shall be dismissed and OPC counsel shall process the matter as it does any other information coming to the attention of the OPC.

(c) Imposition. The district court shall place a respondent on interim suspension upon proof that the respondent has been convicted of a crime which reflects adversely on the respondent's honesty, trustworthiness or fitness as a lawyer, regardless of the pendency of any appeal.

(d) Dissolution of interim suspension. Interim suspension may be dissolved as provided in Rule ~~18(d)~~[14-518\(d\)](#).

(e) Conviction as conclusive evidence. Except as provided in paragraph (b), a certified copy of a judgment of conviction constitutes conclusive evidence that the respondent committed the crime.

(f) Automatic reinstatement from interim suspension upon reversal of conviction. If a respondent suspended solely under the provisions of paragraph (c) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the respondent placed on active status. The vacating of the interim suspension shall not automatically terminate any disciplinary proceeding

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then pending against the respondent, the disposition of which shall be determined on the basis of the available evidence other than conviction.

(g) Notice to clients and other of interim suspension. An interim suspension under this rule shall constitute a suspension of the respondent for the purpose of Rule [2614-526](#).

Rule [2014-520](#). Discipline by consent.

(a) Discipline by consent prior to filing of formal complaint. A respondent against whom an informal complaint has been filed may, prior to the filing of a formal complaint, tender a proposal for discipline by consent, including a conditional admission to the informal complaint or portions thereof in exchange for a disciplinary sanction and final disposition of the informal complaint. The proposal shall include a waiver of right to a screening panel hearing. The proposal shall be submitted to OPC counsel who shall forward the proposal to the Committee chair with a recommendation in favor of or opposed to the proposal, and a statement of the basis for such recommendation. If the proposal is approved by the Committee chair, the sanction shall be imposed as provided in this rule. If the proposal is rejected by the Committee chair, the proposal and admission shall be withdrawn and cannot be used against the respondent in subsequent proceedings.

(b) Discipline by consent after filing of formal complaint. A respondent against whom a formal complaint has been filed may tender a conditional admission to the formal complaint or to a particular count thereof in exchange for a stated form of discipline and final disposition of the formal complaint. The proposal shall be submitted to OPC counsel, who shall then forward the proposal to the district court with a recommendation favoring or opposing the proposal and a statement of the basis for such recommendation. The district court shall either approve or reject the proposal. If the district court approves the proposal and the stated form of discipline includes public discipline, it shall enter the appropriate disciplinary order as provided in paragraph (d). If the district court rejects the proposal, the proposal and conditional admission shall be withdrawn and cannot be used against the respondent in subsequent proceedings.

(c) Order of discipline by consent. The final order of discipline by consent shall be predicated upon:

(c)(1) the informal complaint and any NOIC if no formal complaint has been filed;

(c)(2) the formal complaint, if filed;

(c)(3) the approved proposal for discipline by consent; and

(c)(4) an affidavit of consent by the respondent to be disciplined.

(d) Affidavit of consent. A respondent whose proposal for discipline by consent has been approved as provided in this rule, shall submit an affidavit to the Committee chair or the district court as appropriate, consenting to the imposition of the approved disciplinary sanction and affirming that:

(d)(1) the consent is freely and voluntarily entered;

(d)(2) the respondent is not acting under coercion or duress;

(d)(3) the respondent is fully aware of the implications of submitting the consent;

(d)(4) the respondent is aware that there is presently pending an investigation into, or proceeding involving, allegations that there exist grounds for discipline, the nature of which shall be specifically set forth;

(d)(5) for purposes of disciplinary proceedings, the respondent acknowledges that the material facts so alleged are true; and

(d)(6) the respondent submits consent because the respondent knows that if an informal or formal complaint were predicated upon the matters under investigation were filed, or the pending formal charges were prosecuted, the respondent could not successfully defend against the charges upon which the discipline is based.

Rule 2414-521. Resignation with discipline pending.

(a) A respondent may resign from the Bar, prior to the adjudication of a pending complaint, only with the consent of the Supreme Court and upon such terms as the Supreme Court may impose for the protection of the public.

(b) The respondent shall submit a sworn petition:

(b)(1) admitting for purposes of the disciplinary proceedings the facts upon which the allegations of misconduct are based;

(b)(2) admitting that the facts constitute grounds for discipline;

(b)(3) stating that the respondent's resignation is freely and voluntarily tendered and that it is submitted without coercion or duress;

(b)(4) verifying that the respondent is fully aware of the implications of submitting the resignation;

(b)(5) acknowledging that the discipline matter, the petition and the sanction shall be available to the public and that a notice of the resignation shall be published in the Utah Bar Journal;

(b)(6) agreeing to comply with these Rules, including Rule ~~26(b)~~14-526(b) regarding notice to clients and return of clients' property; and

(b)(7) agreeing to comply with other orders of the Supreme eCourt.

(c) A copy of the petition shall be submitted to OPC counsel. OPC counsel may, within ~~twenty (20)~~ days, object to the petition. If OPC counsel consents to the petition, the Supreme Court shall review the petition and enter an appropriate order. If OPC counsel files a timely objection, the matter shall be set for hearing in the district court. Within ten ~~(10)~~ days after the hearing, the district court's findings of fact and conclusions of law shall be transmitted to the Supreme Court for review and the entry of an appropriate order.

(d) If the Supreme Court accepts the resignation, it shall enter an order specifying the effective date of the resignation. The order may include additional or alternative terms and conditions deemed appropriate, including conditions precedent to readmission.

(e) A respondent whose resignation is accepted must comply with Rule ~~25-14-525~~ and may not apply for readmission until five ~~(5)~~ years after the effective date of the resignation unless the Supreme Court orders otherwise in the order accepting the resignation.

Rule ~~22~~14-522. Reciprocal discipline.

(a) Duty to notify OPC counsel of discipline. Upon being publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, a lawyer admitted to practice in ~~this state~~ Utah shall within ~~thirty (30)~~ days inform the OPC of the discipline. Upon notification from any source that a lawyer within the jurisdiction of

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the Supreme Court has been publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, OPC counsel shall obtain a certified copy of the disciplinary order.

(b) Notice served upon lawyer. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in ~~this state~~ Utah has been publicly disciplined by another court, another jurisdiction, or a regulatory body having disciplinary jurisdiction, OPC counsel shall ~~forthwith~~ issue a notice directed to the lawyer containing:

(b)(1) a copy of the order from the other court, jurisdiction or regulatory body; and

(b)(2) a notice giving the lawyer the right to inform OPC counsel, within ~~thirty (30)~~ days from service of the notice, of any claim by the lawyer predicated upon the grounds set forth in paragraph (d), that the imposition of the equivalent discipline in ~~this state~~ Utah would be unwarranted, and stating the reasons for that claim.

(c) Effect of stay of discipline in other jurisdiction. ~~In the event if~~ the discipline imposed in the other court, jurisdiction or regulatory body has been stayed, any reciprocal discipline imposed in ~~this state~~ Utah shall be deferred until the stay expires.

(d) Discipline to be imposed. Upon the expiration of ~~thirty (30)~~ days from service of the notice pursuant to paragraph (b), the district court shall take such action as may be appropriate to cause the equivalent discipline to be imposed in this jurisdiction, unless it clearly appears upon the face of the record from which the discipline is predicated that:

(d)(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(d)(2) the imposition of equivalent discipline would result in grave injustice; or

(d)(3) the misconduct established warrants substantially different discipline in ~~this state~~ Utah or is not misconduct in this jurisdiction.

If the district court determines that any of these elements exist, it shall enter such other order as it deems appropriate. The burden is on the respondent to demonstrate that the imposition of equivalent discipline is not appropriate.

(e) Conclusiveness of adjudication in other jurisdictions. Except as provided in paragraphs (c) and (d) above, a final adjudication of the other court, jurisdiction or

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regulatory body that a respondent has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in ~~this state~~ Utah.

Rule 2314-523. Proceedings in which lawyer is declared to be incompetent or alleged to be incapacitated.

(a) Involuntary commitment or adjudication of incompetency. If a lawyer has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency, OPC counsel, upon proper proof of the fact, shall file a petition with the district court for the immediate transfer of the lawyer to disability status for an indefinite period until further order of the district court. A copy of the order shall be served by OPC counsel upon the lawyer or the lawyer's guardian or, if no guardian or legal representative has been appointed, upon the director of the institution to which the lawyer has been committed.

(b) Inability to properly defend. If a lawyer alleges in the course of a disciplinary proceeding an inability to assist in the defense due to mental or physical incapacity, the district court shall immediately transfer the lawyer to disability status pending determination of the incapacity.

(b)(1) If the district court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the lawyer retained on disability status until the district court subsequently considers a petition for transfer of the lawyer to active status. If the district court considering the petition for transfer to active status determines the petition should be granted, the interrupted disciplinary proceedings may resume.

(b)(2) If the district court determines the claim of incapacity to defend to be invalid, the disciplinary proceeding shall resume.

(c) Proceedings to determine incapacity. Information relating to a lawyer's physical or mental condition which adversely affects the lawyer's ability to practice law shall be investigated, and ~~where~~ if warranted, shall be the subject of formal proceedings to determine whether the lawyer shall be transferred to disability status. Hearings shall be conducted in the same manner as disciplinary proceedings, except that all of the proceedings shall be confidential. The district court shall provide for such notice to the

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lawyer of proceedings in the matter as it deems proper and advisable and may appoint counsel to represent the lawyer if the lawyer is without adequate representation. The district court may take or direct whatever action it deems necessary or proper to determine whether the lawyer is so incapacitated, including the examination of the lawyer by qualified experts designated by the district court. If, upon due consideration of the matter, the district court concludes that the lawyer is incapacitated from continuing to practice law, it shall enter an order transferring the lawyer to disability status for an indefinite period and until the further order of the district court. Any pending disciplinary proceedings against the lawyer shall be held in abeyance.

(d) Reinstatement from disability status.

(d)(1) Court order. No lawyer transferred to disability status may resume active status except by order of the district court.

(d)(2) Petition. Any lawyer transferred to disability status shall be entitled to petition for transfer to active status once a year, or at whatever shorter intervals the district court may direct in the order transferring the lawyer to disability status or any modifications thereof.

(d)(3) Examination. Upon the filing of a petition for transfer to active status, the district court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including a direction for an examination of the lawyer by qualified experts designated by the district court. In its discretion, the district court may direct that the expense of the examination be paid by the lawyer.

(d)(4) Waiver of privilege. With the filing of a petition for reinstatement to active status, the lawyer shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider and hospital or other institution by whom or in which the lawyer has been examined or treated related to the disability since the transfer to disability status. The lawyer shall furnish written consent to each listed provider to divulge information and records relating to the disability if requested by the district court or district court's appointed experts.

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(d)(5) Learning in law; ~~b~~Bar ~~e~~Examination. The district court may also direct that the lawyer establish proof of competence and learning in law, which proof may include certification by the Bar of successful completion of an examination for admission to practice.

(d)(6) Granting petition for transfer to active status. The district court shall grant the petition for transfer to active status upon a showing by clear and convincing evidence that the disability has been removed.

(d)(7) Judicial declaration of competence. If a lawyer transferred to disability status on the basis of a judicial determination of incompetence is subsequently judicially declared to be competent, the district court may dispense with further evidence that the lawyer's disability has been removed and may immediately order the lawyer's reinstatement to active status upon terms as are deemed proper and advisable.

Rule 2414-524. Reinstatement following a suspension of six months or less.

A respondent who has been suspended for six ~~(6)~~ months or less pursuant to disciplinary proceedings shall be reinstated at the end of the period of suspension upon filing with the district court and serving upon OPC counsel an affidavit stating that the respondent has fully complied with the requirements of the suspension order and that the respondent has fully reimbursed the Bar's Client Security Lawyers' Fund for Client Protection for any amounts paid on account of the respondent's conduct. Within ten ~~(10)~~ days, OPC counsel may file an objection and thereafter the district court shall conduct a hearing.

Rule 2514-525. Reinstatement following a suspension of more than six months; readmission.

(a) Generally. A respondent suspended for more than six ~~(6)~~ months or a disbarred respondent shall be reinstated or readmitted only upon order of the district court. No respondent may petition for reinstatement until three ~~(3)~~ months before the period for suspension has expired. No respondent may petition for readmission until five ~~(5)~~ years after the effective date of disbarment. A respondent who has been placed on interim suspension and is then disbarred for the same misconduct that was the ground for the

interim suspension may petition for readmission at the expiration of five ~~(5)~~ years from the effective date of the interim suspension.

(b) Petition. A petition for reinstatement or readmission shall be verified, filed with the district court, and shall specify with particularity the manner in which the respondent meets each of the criteria specified in paragraph (e) or, if not, why there is otherwise good and sufficient reason for reinstatement or readmission. With specific reference to paragraph (e)(4), prior to the filing of a petition for readmission, the respondent must receive a report and recommendation from the Bar's Character and Fitness Committee. In addition to receiving the report and recommendation from the Character and Fitness Committee, the respondent must satisfy all other requirements as set forth in ~~the Bar's Rules Governing Article 7, Admissions~~. Prior to or as part of the respondent's petition, the respondent may request modification or abatement of conditions of discipline, reinstatement or readmission.

(c) Service of petition. The respondent shall serve a copy of the petition upon OPC counsel.

(d) Publication of notice of petition. At the time a respondent files a petition for reinstatement or readmission, OPC counsel shall publish a notice of the petition in the Utah Bar Journal. The notice shall inform members of the Bar about the application for reinstatement or readmission, and shall request that any individuals file notice of their opposition or concurrence with the district court within ~~thirty (30)~~ days of the date of publication. In addition, OPC counsel shall notify each complainant in the disciplinary proceeding that led to the respondent's suspension or disbarment that the respondent is applying for reinstatement or readmission, and shall inform each complainant that the complainant has ~~thirty (30)~~ days from the date of mailing to raise objections to or to support the respondent's petition. Notice shall be mailed to the last known address of each complainant in OPC counsel's records.

(e) Criteria for reinstatement and readmission. A respondent may be reinstated or readmitted only if the respondent meets each of the following criteria, or, if not, presents good and sufficient reason why the respondent should nevertheless be reinstated or readmitted:.

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(e)(1) The respondent has fully complied with the terms and conditions of all prior disciplinary orders except to the extent they are abated by the district court.

(e)(2) The respondent has not engaged nor attempted to engage in the unauthorized practice of law during the period of suspension or disbarment.

(e)(3) If the respondent was suffering from a physical or mental disability or impairment which was a causative factor of the respondent's misconduct, including substance abuse, the disability or impairment has been removed. Where substance abuse was a causative factor in the respondent's misconduct, the respondent shall not be reinstated or readmitted unless:

(e)(3)(A) the respondent has recovered from the substance abuse as demonstrated by a meaningful and sustained period of successful rehabilitation;

(e)(3)(B) the respondent has abstained from the use of the abused substance and the unlawful use of controlled substances for the preceding six ~~(6)~~ months; and

(e)(3)(C) the respondent is likely to continue to abstain from the substance abused and the unlawful use of controlled substances.

(e)(4) Notwithstanding the conduct for which the respondent was disciplined, the respondent has the requisite honesty and integrity to practice law. In readmission cases, the respondent must appear before the Bar's Character and Fitness Committee and cooperate in its investigation of the respondent. A copy of the Character and Fitness Committee's report and recommendation shall be provided to the OPC and forwarded to the district court assigned to the petition after the respondent files a petition.

(e)(5) The respondent has kept informed about recent developments in the law and is competent to practice.

(e)(6) In cases of suspensions for one ~~(4)~~ year or more, the respondent shall be required to pass the Multistate Professional Responsibility Examination.

(e)(7) In all cases of disbarment, the respondent shall be required to pass the student applicant ~~b~~Bar ~~e~~Examination and the Multistate Professional Responsibility Examination.

942 (e)(8) The respondent has fully reimbursed the Bar's Client Security Lawyers' Fund
943 for Client Protection for any amounts paid on account of the respondent's conduct.

944 (f) Review of petition. Within ~~sixty (60)~~ days after receiving a respondent's petition for
945 reinstatement or readmission, OPC counsel shall either:

946 (f)(1) advise the respondent and the district court that OPC counsel will ~~stipulate not~~
947 object to the respondent's reinstatement or readmission; or

948 (f)(2) file a written objection to the petition.

949 (g) Hearing; report. If an objection is filed by OPC counsel, the district court, as soon
950 as reasonably practicable and within a target date of 90 days of the filing of the petition,
951 ~~shall, within ninety (90) days of the filing of the petition,~~ conduct a hearing at which the
952 respondent shall have the burden of demonstrating by a preponderance of the evidence
953 that the respondent has met each of the criteria in paragraph (e) or, if not, that there is
954 good and sufficient reason why the respondent should nevertheless be reinstated or
955 readmitted. The district court shall enter its findings and order. If no objection is filed by
956 OPC counsel, the district court shall review the petition without a hearing and enter its
957 findings and order.

958 (h) Successive petitions. Unless otherwise ordered by the district court, no
959 respondent shall apply for reinstatement or readmission within one ~~(4)~~-year following an
960 adverse judgment upon a petition for reinstatement or readmission.

961 (i) Conditions of reinstatement or readmission. The district court may impose
962 conditions on a respondent's reinstatement or readmission if the respondent has met
963 the burden of proof justifying reinstatement or readmission, but the district court
964 reasonably believes that further precautions should be taken to ensure that the public
965 will be protected upon the respondent's return to practice.

966 (j) Reciprocal reinstatement or readmission. If a respondent has been suspended or
967 disbarred solely on the basis of discipline imposed by another court, another jurisdiction,
968 or a regulatory body having disciplinary jurisdiction, and if the respondent is later
969 reinstated or readmitted by that court, jurisdiction or regulatory body, the respondent
970 may petition for reciprocal reinstatement or readmission in ~~this state~~ Utah. The
971 respondent shall file with the district court and serve upon OPC counsel a petition for

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reciprocal reinstatement or readmission, as the case may be. The petition shall include a certified or otherwise authenticated copy of the order of reinstatement or readmission from the other court, jurisdiction or regulatory body. Within ~~twenty~~ (20) days of service of the petition, OPC counsel may file an objection thereto based solely upon substantial procedural irregularities. If an objection is filed, the district court shall hold a hearing and enter its finding and order. If no objection is filed, the district court shall enter its order based upon the petition.

Rule 2614-526. Notice of disability or suspension; return of clients' property; refund of unearned fees.

(a) Effective date of order; winding up affairs. Each order that imposes disbarment or suspension is effective ~~thirty~~ (30) days after the date of the order, or at such other time as the order provides. Each order that transfers a respondent to disability status is effective immediately upon the date of the order, unless the order otherwise provides. After the entry of any order of disbarment, suspension, or transfer to disability status, the respondent shall not accept any new retainer or employment as a lawyer in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date, the respondent may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.

(b) Notice to clients and others. In every case in which a respondent is disbarred or suspended for more than six ~~(6)~~ months, the respondent shall, within ~~twenty~~ (20) days of the entry of the order, accomplish the following acts:

(b)(1) ~~N~~otify each client and any co-counsel in every pending legal matter, litigation and non-litigation, that the respondent has been disbarred or suspended from the practice of law and is disqualified from further participation in the matter;

(b)(2) ~~N~~otify each client that, in the absence of co-counsel, the client should obtain a new lawyer, calling attention to the urgency to seek new counsel, particularly in pending litigation;

(b)(3) ~~D~~eliver to every client any papers or other property to which the client is entitled or, if delivery cannot reasonably be made, make arrangements satisfactory to

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the client or co-counsel of a reasonable time and place where papers and other property may be obtained, calling attention to any urgency to obtain the same;

(b)(4) ~~R~~refund any part of any fee paid in advance that has not been earned as of the effective date of the discipline;

(b)(5) ~~I~~n each matter pending before a court, agency or tribunal, notify opposing counsel or, in the absence of counsel, the adverse party, of the respondent's disbarment or suspension and consequent disqualification to further participate as a lawyer in the matter;

(b)(6) ~~F~~ile with the court, agency or tribunal before which any matter is pending a copy of the notice given to opposing counsel or to an adverse party; and

(b)(7) ~~W~~ithin ten ~~(10)~~ days after the effective date of disbarment or suspension, file an affidavit with OPC counsel showing complete performance of the foregoing requirements of this rule. The respondent shall keep and maintain for inspection by OPC counsel all records of the steps taken to accomplish the requirements of this rule.

(c) Lien. Any attorney's lien for services rendered which are not tainted by reason of disbarment or suspension shall not be rendered invalid merely because of the order of discipline.

(d) Other notice. If a respondent is suspended for six ~~(6)~~ months or less, the district court may impose conditions similar to those set out in paragraph (b). In any public disciplinary matter, the district court may also require the issuance of notice to others as it deems necessary to protect the interests of clients or the public.

(e) Compliance. Substantial compliance with the provisions of paragraphs (a), (b) and (d) shall be a precondition for reinstatement or readmission. Willful failure to comply with paragraphs (a), (b) and (d) shall constitute contempt of court and may be punished as such or by further disciplinary action.

Rule 2714-527. Appointment of trustee to protect clients' interest when lawyer disappears, dies, is suspended or disbarred, or is transferred to disability status.

(a) Protective appointment of trustee. If a lawyer has disappeared or died, or if a respondent has been suspended or disbarred or transferred to disability status, and if there is evidence that the lawyer or respondent has not complied with the provisions of

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Rule ~~26-14-526~~ and no partner, executor, or other responsible party capable of conducting the lawyer's or respondent's affairs is known to exist, a district judge of the judicial district in which the lawyer or respondent maintained a principal office, upon the request of OPC counsel, may appoint a trustee to inventory the lawyer's or respondent's files, notify the lawyer's or respondent's clients, distribute the files to the clients, return unearned fees and other funds, and take any additional action authorized by the judge making the appointment.

(b) Confidentiality. No attorney-client relationship exists between the client and the trustee except to the extent necessary to maintain and preserve the confidentiality of the client. The trustee shall not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate, except as necessary to carry out the order of the court making the appointment.

(c) Immunity. Any person appointed as a trustee shall have the immunity granted by Rule ~~43-14-513~~ of these Rules.

Rule ~~28~~14-528. Appeal by complainant.

The complainant shall not have a right of appeal, except as provided in Rule ~~10(a)(6)~~14-510(a)(6) to appeal a dismissal of an informal complaint.

Rule ~~29~~14-529. Statute of limitations.

Proceedings under ~~these rules~~ this article shall be commenced within four ~~(4)~~ years of the discovery of the acts allegedly constituting a violation of the Rules of Professional Conduct.

Rule ~~30~~14-530. Costs.

(a) Assessment. The prevailing party in a proceeding on a formal complaint may be awarded judgment for costs in accordance with Rule 54(d) of the Utah Rules of Civil Procedure.

(b) Offer of discipline by consent. OPC counsel shall not be deemed to have prevailed on any count in the formal complaint unless the sanction imposed exceeds any sanction to which the respondent conditionally consented under Rule ~~20(b)~~14-520(b) prior to the hearing.

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(c) Disability cases. Costs shall not be awarded in disability cases except pursuant to paragraph (d).

(d) Trusteeship. Court-appointed trustees, including cases in which OPC is appointed the trustee, may collect costs for notification to the respondent's clients, including charges for copying, postage, publication and fees from money collected.

Rule ~~34~~14-531. Noncompliance with child support order, child visitation order, subpoena or order relating to paternity or child support proceeding.

(a) Upon entry of an order holding a lawyer in contempt for the lawyer's noncompliance with a child support order, child visitation order, or a subpoena or order relating to a paternity or child support proceeding, a district court may suspend the lawyer's license to engage in the practice of law consistent with applicable law (currently Utah Code section 78-32-17) and, if suspended, shall also impose conditions of reinstatement.

(b) ~~In the event~~ If a district court suspends a lawyer's license to engage in the practice of law, the court shall provide a copy of the order to the OPC.

Rule ~~32~~14-532. Failure to answer charges.

(a) Failure to answer. If having received actual notice of the charges filed, the respondent fails to answer the charges within ~~twenty~~ (20) days, the respondent shall be deemed to have admitted the factual allegations.

(b) Failure to appear. If the respondent, having been ordered by the Committee to appear and having received actual notice of that order, fails to appear, the respondent shall have been deemed to have admitted the factual allegations which were the subject of such appearance. The Committee shall not, absent good cause, continue or delay proceedings because of the respondent's failure to appear.

(c) Notice of consequences. Any notice within the scope of paragraph (a) or (b) above shall expressly state the consequences, as specified above, of the respondent's failure to answer or appear.